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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

SHERRY R. HUBER,)
)
Plaintiff,) Case No. CIV 03-527-S-BLW
)
vs.) **AFFIDAVIT OF JOHN C. LYNN**
) **IN SUPPORT OF MOTION**
IDA-WEST ENERGY COMPANY, and) **TO COMPEL**
IDAHO POWER COMPANY,)
)
Defendants.)
)

State of Idaho)
)
) ss
County of Ada)

JOHN C. LYNN, being first duly sworn upon oath, deposes and says:

1. That Affiant is the attorney of record for the above-named Plaintiff and makes this Affidavit based on personal knowledge.

2. That the Exhibit attached hereto is a true and correct copy of the original as follows:

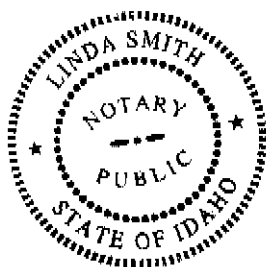
Exhibit A - Defendants' Responses to Plaintiff's First Set of Requests for Production of Documents (14 pages).

DATED this 23 day of August, 2004.

LYNN, SCOTT & HACKNEY, P.L.L.C.

BY: [Signature]
JOHN C. LYNN
Attorney for Plaintiff

SWORN To and subscribed before me this 23 day of Aug, 2004.



[Signature]
Notary Public
Commission Expires: 3/17/2009
Resides at: Coate Lake

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That a true and complete copy of the foregoing document was:

- ☒ mailed, postage prepaid;
- ☐ hand delivered;
- ☐ facsimile transmission

on this 23 day of August, 2004, to:

Trudy Hanson Fouser
GJORDING & FOUSER, PLLC
509 W. Hays Street
P.O. Box 2837
Boise, Idaho 83701

Tamsen L. Leachman
HALI, FARLEY, OBERRECHT & BLANTON, P.A.
702 West Idaho Street, Suite 700
P.O. Box 1271
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[Signature]

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RECEIVED

JUN 17 2004

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LYNN, SCOTT & HACKNEY

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

SHERRY R. HUBER,)	Case No. CIV03-527-S-BLW
)	
Plaintiff,)	
)	DEFENDANTS' RESPONSES TO
vs.)	PLAINTIFF'S FIRST SET OF
)	REQUESTS FOR PRODUCTION
IDA-WEST ENERGY COMPANY, and)	OF DOCUMENTS
IDAHO POWER COMPANY,)	
)	
Defendants.)	

COME NOW, the defendants, Ida-West Energy Company and Idaho Power Company, by and through their attorneys of record, Gjording and Fouser, PLLC., and respond to the requests for production of documents contained in *Plaintiff's First Set of*

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS, P. 1

EXHIBIT

tabler

A

Interrogatories and Requests for Production of Documents, dated May 7, 2004, pursuant to Rule 34 of the Federal Rules of Civil Procedure. These answering Defendants reserve the right to supplement each and every response as discovery is undertaken during the course of this case.

GENERAL OBJECTIONS

1. These answering Defendants object to the extent that these Requests for Production of Documents are framed to seek information which is not specific to the Plaintiff's claims and are irrelevant to the issues pled in Plaintiff's Complaint and are not reasonably calculated to lead to the discovery of admissible evidence.

2. These answering Defendants object to the extent the information sought in these Requests for Production of Documents is confidential, a trade secret, or of a proprietary nature to these answering Defendants.

3. These answering Defendants object to introductory language contained in these Requests for Production of Documents to the extent it purports to demand discovery on terms, or to impose obligations upon these Defendants which are beyond the scope of, or different from, the provisions governing discovery in the Federal Rules of Civil Procedure.

4. These answering Defendants object to the extent that the information sought in these Requests for Production of Documents include documents protected by the attorney/client privilege, work product doctrine and documents which contain the mental impressions, conclusions, opinion, or legal theories of an attorney or other representative of a party concerning the litigation.

5. These answering Defendants object to the extent that the information in these Requests for Production of Documents include documents prepared in anticipation of litigation after the filing of Plaintiff's Charge of Discrimination with the Idaho Human Rights Commission on February 29, 2000.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce for copying and inspection any and all personnel files relating to the Plaintiff.

RESPONSE: Please refer to Exhibit A attached hereto for a copy of Plaintiff's personnel file and identified as DEF001-127.

REQUEST FOR PRODUCTION NO. 2: Please produce for copying and inspection all documents, not contained in your Response to Request for Production No. 1, reflecting the perception by Plaintiff's subordinates, including complaints by any of Plaintiff's subordinates, that Plaintiff's work performance was deficient.

RESPONSE: Defendants object to this request for production, as it is overly broad, confusing, vague, and ambiguous, particularly as to the term "work performance." Without waiver of and subject to this objection, please refer to the documents attached as part of *Defendant's Initial Disclosures*, dated April 2, 2004. Please also refer to Exhibit B attached hereto for a copy of the Summary of Meeting with Sherry Huber, Friday, January 21, 2000, and identified as DEF320-322.

REQUEST FOR PRODUCTION NO. 3: Please produce for copying and inspection documents, not contained in your Response to Request for Production No. 1, reflecting the perception by Plaintiff's superiors, including Idaho-West Energy Company

("IWE") or Idaho Power Company ("IPC") Board members, that Plaintiff's work performance was deficient.

RESPONSE: Defendants object to this request for production, as it is overly broad, confusing, vague, and ambiguous, particularly as to the term "work performance." Defendants further object to this request for production as it seeks information beyond the permissible scope of discovery. Some of the information sought is protected under the doctrine of attorney-client privilege, is the work product of Defendants' attorney, and/or was prepared in anticipation of litigation. Without waiver of and subject to this objection, please refer to the documents attached as part of *Defendant's Initial Disclosures*, dated April 2, 2004. Please also refer to Exhibit B attached hereto for a copy of the Summary of Meeting with Sherry Huber, Friday, January 21, 2000, and identified as DEF320-322.

REQUEST FOR PRODUCTION NO. 4: Please produce for copying and inspection all documents relating to Plaintiffs application for Vice President of IPC.

RESPONSE: At this time, Defendants are unable to locate the requested application. However, Defendants will continue to make a good faith effort to locate the application and will supplement this response to Request for Production No. 4 should the application be located.

REQUEST FOR PRODUCTION NO. 5: Please produce for copying and inspection all diaries or other personal documentation by David Gray, Tyler Wymond, Blaine Graff, Mike Elliott, Kimberly Schoonover, Ed Hillary, Nanci Heckinlively, Jennifer Sakpraseuth, Jody Haun, Bob Clime, Dale Lambers, Randy Hill and Jan Packwood in the possession of Defendant that relate to Plaintiff.

RESPONSE: Defendants object to this request for production as it seeks information beyond the permissible scope of discovery under Federal Rule of Civil Procedure 34. As framed, this request seeks production of "personal" documents of individuals who are not named parties to this action. Defendants are not in the possession, custody or control of the documents requested. Further, the documents requested are neither relevant to any issue pled in Plaintiff's complaint nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that the request invades the privacy of non-parties and is harassing in nature. The request is also vague and ambiguous, particularly as to the term "personal documentation," and is overbroad.

REQUEST FOR PRODUCTION NO.6: For the following individuals: David Gray, Jody Haun, Dale Lambers and Ed Hillary, please produce for copying and inspection:

- (a) original application for employment;
- (b) employee action forms;
- (c) salary and bonus history.

RESPONSE: Defendants object to this request for production as it seeks information beyond the permissible scope of discovery. As framed, this request seeks production of documents for individuals who are not named parties to this action. The information sought is not relevant to the causes of action pled in Plaintiff's Complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that the request invades the privacy of non-parties and is harassing in nature.

REQUEST FOR PRODUCTION NO. 7: Please produce for copying and inspection any and all documentation relating to the April 1999 seminar held at the Doubletree Inn, Boise, Idaho, including but not limited to names of attendees and questionnaires that relate to Plaintiff.

RESPONSE: At this time, Defendants are not aware of any documents responsive to this request for production. However, discovery is continuing in this matter and this response to Request for Production No. 7 may be supplemented should additional information be located.

REQUEST FOR PRODUCTION NO. 8: Please produce for copying and inspection any and all documented information available from Plaintiff's company computer hard drive whether preserved, copied or placed in the recycle bin.

RESPONSE: Defendants object to this request for production, as it is overly broad, confusing, vague, and ambiguous, and overly burdensome and is therefore harassing in nature. It also seeks information that would not be relevant to this case and would not lead to the discovery of admissible evidence. Defendants further object on the grounds that some of the information sought may be confidential, a trade secret, or of a proprietary nature to the Defendants. Without waiver of and subject to these objections, Defendants are in the process of locating such information and will supplement this response to Request for Production No. 8 should information be located that is not covered by the above-referenced objections.

REQUEST FOR PRODUCTION NO. 9: Please produce for copying and inspection any and all documents reflecting Plaintiff's January 26, 2000 meeting with Jan Packwood.

RESPONSE: Please refer to the documents attached as part of *Defendant's Initial Disclosures*, dated April 2, 2004.

REQUEST FOR PRODUCTION NO. 10: Please produce for copying and inspection Jan Packwood's response to Plaintiff's February 9, 2000 email to Jan Packwood.

RESPONSE: At this time, Defendants are not aware of any such e-mails or written communications pertaining to Mr. Packwood's response to the above-referenced e-mail, as Defendants believe Mr. Packwood responded via telephone. However, discovery is continuing in this matter and Defendant will supplement this response to Request for Production No. 10 should any responsive documents be located.

REQUEST FOR PRODUCTION NO. 11: Please produce for copying and inspection any and all documentation relating to Henry Huber's complaint of inappropriate emails by Randy Hill to the Clines and/or Mr. Elliott in August of 1998, including any investigation thereof and remedial action taken by the Defendant.

RESPONSE: Defendants object to this request for production, as it is overly broad, burdensome, vague, and ambiguous. Defendants also object on the grounds that some of the information sought is confidential, or of a proprietary nature to the Defendants. In addition, portions of the information requested are protected under the doctrine of attorney-client privilege, is the work product of Defendants' attorney, and/or was prepared in anticipation of litigation. Further, Defendants object to this request for production as it seeks information beyond the permissible scope of discovery. As framed, this request seeks production of documents for individuals who are not named parties to this action. The information sought is not relevant to the causes of action pled

in Plaintiff's Complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that the request invades the privacy of non-parties and is harassing in nature.

REQUEST FOR PRODUCTION NO. 12: Please produce for copying and inspection any and all documentation relating to the Kremer Report (Sebris Busto P.S.) including but not limited to work agreement(s), invoices, documents supplied to her by the Defendants and notes of interviews.

RESPONSE: Defendants object to this request for production, as it is overly broad, burdensome, vague, and ambiguous. Further, Defendants object to this request for production as it seeks information beyond the permissible scope of discovery in that it is neither relevant to the issues in this case nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, see the documents produced as part of *Defendant's Initial Disclosures*, dated April 2, 2004, and those documents submitted to the Idaho Human Rights Commission.

REQUEST FOR PRODUCTION NO. 13: Please produce for copying and inspection any and all documentation relating to the Defendants' allegation that Plaintiff caused harm to the reputation of IWE.

RESPONSE: Defendants object to this request for production, as it is overly broad, confusing, vague, burdensome and ambiguous as to the phrase "caused harm." Without waiver of and subject to this objection, please refer to the documents attached as part of *Defendant's Initial Disclosures*, dated April 2, 2004. Please also refer to Exhibit B attached hereto for a copy of the Summary of Meeting with Sherry Huber, Friday, January 21, 2000, and identified as DEF320-322.

REQUEST FOR PRODUCTION NO. 14: Please produce for copying and inspection any and all documentation relating to the Defendants' allegation that Plaintiff did not support Blaine Graff as her superior, including but not limited to, Plaintiff's (1) February 22, 2000 memo and (2) January 20, 2000 letter addressing this subject.

RESPONSE: Please refer to the documents attached as part of *Defendant's Initial Disclosures*, dated April 2, 2004. Please also refer to Exhibit B attached hereto for a copy of the Summary of Meeting with Sherry Huber, dated Friday, January 21, 2000, identified as DEF320-322 and Exhibit C attached hereto for a copy of a memo from S. Huber to Randy Hill dated January 19, 2000, identified as DEF323-325.

REQUEST FOR PRODUCTION NO. 15: Please produce for copying and inspection any and all documentation relating to:

- (a) salary history of all IWE officers and employees from 1991 through 2003;
- (b) bonus history of all IWE officers and employees from 1991 through 2003;
- (c) percentage of salary increases of all IWE officers and employees from 1991 through 2003.

RESPONSE: Defendants object to this request on the grounds that as framed, it seeks production of documents that are neither relevant to any issue pled in Plaintiff's Complaint nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request for production as it is overly broad, confusing, vague, compound, ambiguous and would place undue burden, hardship and expense on Defendants to compile the information sought. Additionally, Defendants object as some

of the requested information is of a proprietary nature. The request also seeks personal information of persons who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 16: Please produce for copying and inspection any and all documentation relating to the November 1999 salary survey conducted by Defendant IPC.

RESPONSE: Defendants object to this request on the grounds that as framed, it seeks production of documents that are neither relevant to any issue pled in Plaintiff's Complaint nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request for production as it is overly broad, confusing, vague, compound, ambiguous and would place undue burden, hardship and expense on Defendants to compile the information sought. Additionally Defendants object as some of the requested information is of a proprietary nature. The request also seeks personal information of persons who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 17: Please produce for copying and inspection any and all documentation relating to Plaintiff's (1) 401(K) plan and (2) deferred comp plan with Defendants' and Plaintiff's respective contributions thereto.

RESPONSE: Please refer to Exhibit D attached hereto for a copy of a statement of Plaintiff's Employee Savings Plan from January 1, 2004 through March 31, 2004, identified as DEF128-132; Exhibit E attached hereto for a copy of Idaho Power Company Employee Savings Plan, identified as DEF133-199; Exhibit F attached hereto for a copy of the First Amendment to Idaho Power Company Employee Savings Plan, identified as DEF200-207; Exhibit G attached hereto for documents pertaining to Ida-West Energy Company's Executive Deferral Compensation Plan, identified as DEF208-285; and

Exhibit H attached hereto for a copy of Plaintiff's Employees Savings Plan Account Statements, identified as DEF286-319.

REQUEST FOR PRODUCTION NO. 18: Please produce for copying and inspection any and all documentation relating to the reorganization of Defendant IWE in the fall of 1999 and winter of 2000 and all succession plans submitted.

RESPONSE: Defendants object to this request on the grounds that as framed, it seeks production of documents that are neither relevant to any issue pled in Plaintiff's Complaint nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request for production as it is overly broad, confusing, vague, compound, ambiguous and would place undue burden, hardship and expense on Defendants to compile the information sought. Additionally Defendants object as some of the requested information is of a proprietary nature. The request also seeks personal information of persons who are not parties to this lawsuit. It also may contain information protected by privileges, including the attorney client and/or work product privileges.

REQUEST FOR PRODUCTION NO. 19: Please produce for copying and inspection any and all documentation relating to any staff meeting by and between two or more employees of either Defendant where Plaintiff's performance was discussed.

RESPONSE: Defendants object to this request for production as it is overly broad, confusing, vague, compound, and ambiguous as to the time frame for which the information sought. It also seeks information that may be protected by the attorney client and/or work product privileges. Without waiving these objections, please refer to the documents produced as part of *Defendant's Initial Disclosures*, dated April 2, 2004 and

Exhibit B attached hereto for a copy of the Summary of Meeting with Sherry Huber, dated Friday, January 21, 2000, identified as DEF320-322. Should Defendants become aware of additional documents responsive to this request, not covered by any privilege, this response to Request for Production No. 19 will be supplemented.

REQUEST FOR PRODUCTION NO. 20: Please produce for copying and inspection any and all documentation relating to Plaintiff's application for short term and long term disability benefits, including but not limited to all medical records submitted therefore.

RESPONSE: Defendants object to this request for production as it seeks information beyond the permissible scope of discovery under Federal Rule of Civil Procedure 34. Defendants do not have access to Plaintiff's medical records. Without waiving these objections, for additional documents that may be responsive to this request, please refer to the documents produced as part of *Defendant's Initial Disclosures*, dated April 2, 2004, as well as documents contained in Plaintiff's personnel file, which is attached hereto as Exhibit A.

REQUEST FOR PRODUCTION NO. 21: Please produce for copying and inspection any and all documents or exhibits intended for use by either Defendant at trial.

RESPONSE: At this time, Defendants have not determined exhibits to be used at the trial of this matter. Upon such determination, this answer to Request for Production No. 21 will be supplemented in accordance with the Federal Rules of Civil Procedure and/or any scheduling order entered by the Court in this matter.

REQUEST FOR PRODUCTION NO. 22: Please produce for copying and inspection any and all documents or tangible things as defined above evidencing or

relating to the claims which form the basis for this suit or Defendants' defenses which have not been addressed above.

RESPONSE: Defendants object to this request for production as it is overly broad, confusing, vague, compound, ambiguous and would place undue burden, hardship and expense on Defendants to compile the information sought. Additionally, Defendants object to the request as some of the information is protected under the doctrine of attorney-client privilege, is the work product of Defendants' attorney and/or was prepared in anticipation of litigation. Defendant further object on the grounds that some of the information sought is of a proprietary nature and contains trade secrets. Without waiver of and subject to these objections, please refer to the documents attached as part of *Defendant's Initial Disclosures*, dated April 2, 2004, documents submitted to the Idaho Human Rights Commission, documents submitted by Plaintiff in discovery, Exhibits A through H attached hereto, Exhibit I attached hereto for a copy of a letter to Randy Hill From Sherry Huber, dated October 9, 2000, identified as DEF326-327, which was inadvertently excluded from *Defendants' Initial Disclosure*; and Exhibit J attached hereto for a copy of a Memo to All Employees from Randy Hill, dated October 30, 2000, identified as DEF328-329.

DATED this 16 day of June, 2004.

GJORDING & FOUSER, PLLC

TRUDY HANSON FOUSER
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of June, 2004, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

John C. Lynn
LYNN, SCOTT & HACKNEY, P.L.L.C.
500 West Bannock
Boise, ID 83702

- ☐ U.S. mail, postage prepaid
- ☐ express mail
- ☒ hand delivery
- ☐ facsimile



Trudy Hanson Fouser